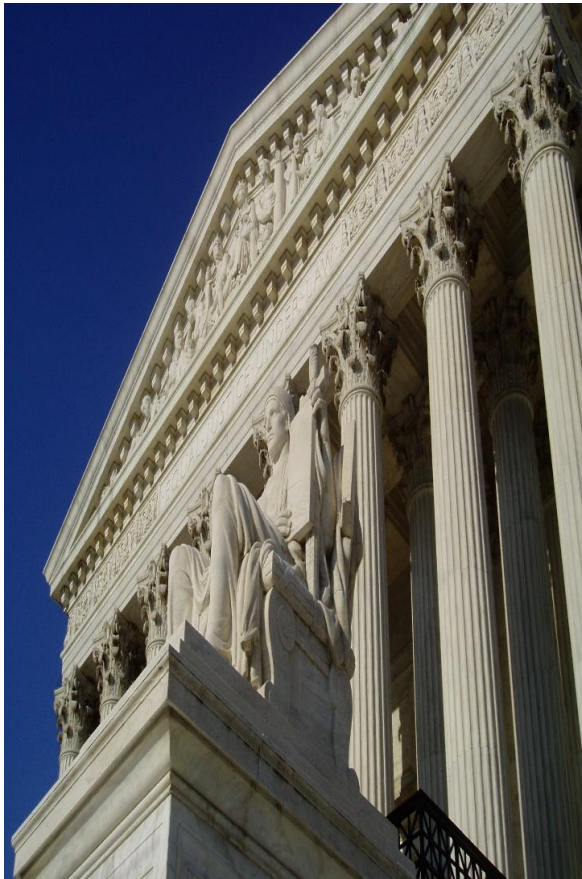


Federal Judicial Center

*“to further the development and adoption of
improved judicial administration through
education & research”*



The United States Judiciary



Federalism and Jurisdiction
The Courts
Legal Education
Judicial Selection
Federal Judges
Court Personnel
Judicial Administration
Conduct and Discipline
Judicial Procedure
Civil Proceedings
Criminal Proceedings
Jury Trials
Sentencing
Judicial Education

Federalism

Federal

U.S. Constitution

Federal laws

Executive

Legislature (Congress)

Judiciary



State

50 States, D.C., Puerto Rico

State constitutions

State laws

Independent executive, legislature, courts



Most U.S. law = state law Over 90% litigation is filed in state courts

Jurisdiction: State

Contract disputes
Domestic relations
Personal injury
State criminal offenses
Constitutional claims:
state and federal
Specialized courts
(family, traffic, juvenile, drug, tax)



Jurisdiction: Federal

Subject

U.S. Constitution

Federal law

Treaty

Bankruptcy, customs, patent,
admiralty, international trade

Party

Federal government or state

Ambassadors, public officials,
foreign states

Diversity

Citizens of different states, if
amount >\$75,000



Judges and Cases

	FEDERAL	STATE
Judges	787	30,377
Criminal Cases <i>(first instance)</i>	80,081	20,437,849
Civil Cases <i>(first instance)</i>	281,608	18,980,531
Specialized <i>(mostly civil)</i>	912,717 <i>(bankruptcy and federal claims)</i>	64,061,968 <i>(juvenile, domestic relations, traffic, etc.)</i>
Appeals	54,244	272,975

Federal Courts



Supreme Court

9 Justices
Discretionary review
Questions of law
No advisory opinions
Petitions: 4,715
Full Review: 71

Courts of Appeal

179 Judges
13 Circuits
6-28 Judges in each circuit
3-judge panels decide questions of law
Cases Filed: 55,875

District Court (First Instance)

663 Judges
94 Districts
1-27 Judges in each district
Cases Filed: 361,689

Specialized

Federal Circuit
Bankruptcy
International Trade
Federal Claims
Armed Forces
Veterans, Tax
Administrative
(e.g., immigration, social security)

To the Supreme Court



If Writ of Certiorari Granted

United States
Court of Appeals

State Supreme Court
IF case involves federal law

Legal Education

After university/college

3 years

Core subjects

Constitutional law, civil procedure, criminal law, torts, property, evidence, professional responsibility

Electives

Skills

Writing, advocacy, negotiation, clinical education

Professors

Academics and practitioners

204 accredited schools



The Legal Profession

Bar exam

Professional responsibility exam

Admission to state bar

- Graduate from accredited law school

- Continuing legal education (*mandatory in 45 states*)

Areas of practice

- Private sector

- Public sector

Judicial Office: Eligibility

No exam

Few formal selection criteria

Candidates selected from:

- Experienced practitioners (public and private)

- State courts

- Lower federal courts

- Academia

Judicial education

- Federal: not mandatory

- State: mandatory in some states

Judicial Selection: State



Methods vary by state

Election (31 states)

Partisan (11); non-partisan (20)

Appointment by governor

Merit selection commissions

“Retention” elections

Appointment/election by legislature (4 states)



Renewable terms

Usually 2-14 years

Mandatory retirement in 30 states

Usually by age 70-75

(Vermont at age 90)

Judicial Selection: Federal

President nominates
Senate must confirm

Recommendation: legislators, others
(usually from President's political party)

Investigation: White house, DOJ, FBI

Review: *American Bar Association*
(not legally required, non-binding)

Hearing: Senate Judiciary Committee

Vote: Full Senate

Life tenure (“good behavior”)

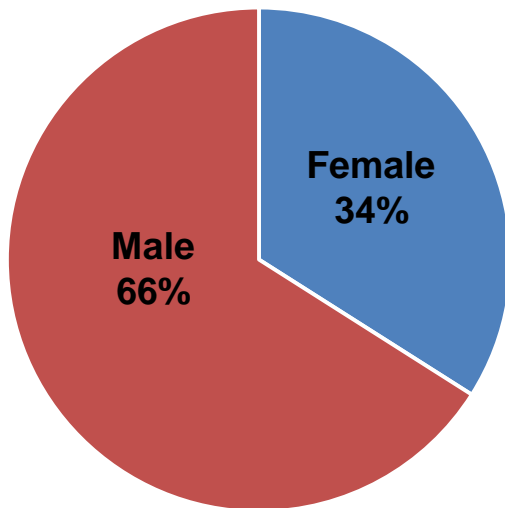
Article I Judges appointed to limited but renewable terms

- *Bankruptcy* - appointed by Court of Appeals to 14-year term
- *Magistrate* - appointed by District Court to 8-year term
- *Court of Claims* - appointed by President to 15-year term

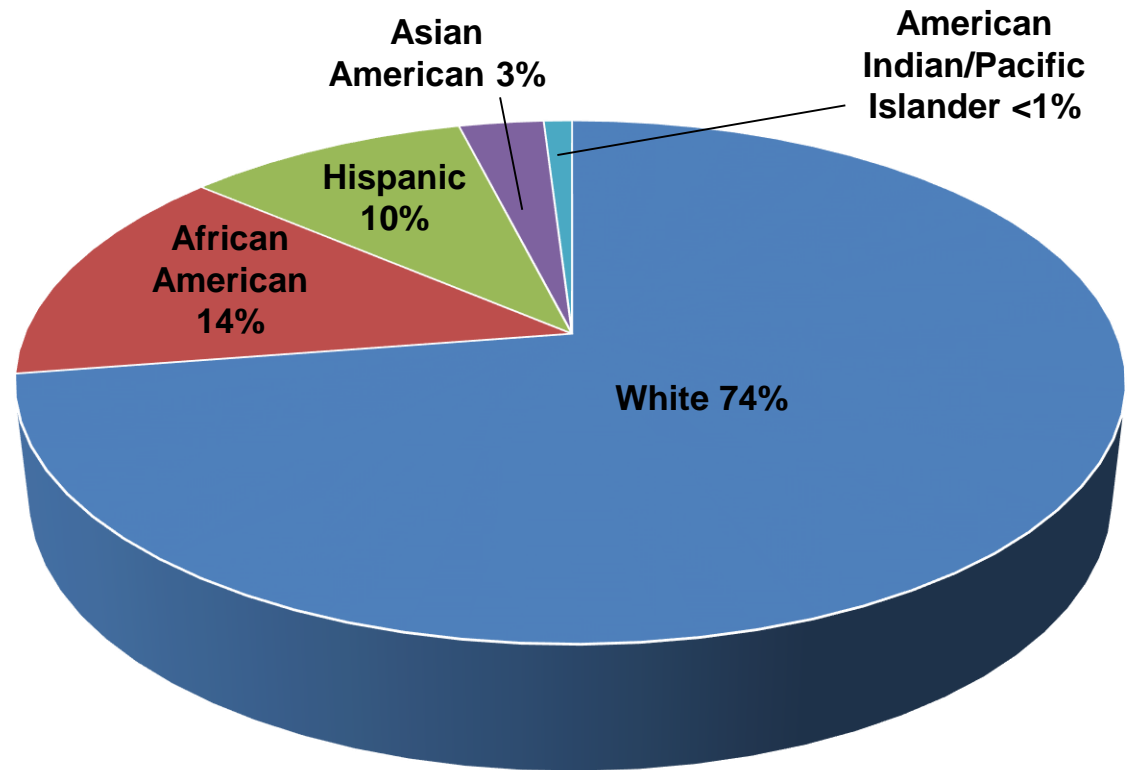


Diversity in Federal Judiciary

Gender



Race/Ethnicity



Status: Chief and Senior

Chief Justice *(Supreme Court)*

Nominated by President, confirmed by Senate

Presides over court sessions, Judicial Conference, AO, FJC, Smithsonian, National Gallery

Chief Judge *(Courts of Appeal, District, Bankruptcy)*

Assigned by seniority (time on court)

7-year term

Supervises court administration

Delegates to Clerk of Court

May have reduced caseload

Senior Judge *(optional)*

Eligibility: 65 years of age

Rule: when age + years of service = 80

Reduced case load



Federal Court Personnel

District Court (*First Instance*)

- Clerk of Court

- Other administrative staff (+/- 80 in medium size court)

- Pro se Attorneys

- Chambers Staff: 2 law clerks, secretary

Court of Appeals

- Circuit Executive

- Clerk of Court

- Other administrative staff (+/- 70 in medium size court)

- Staff Attorneys

- Circuit Mediators

- Chambers Staff: 4 law clerks, 2 secretaries

Judicial Law Clerk

Recent law school graduate

Term: 1-2 years

Career clerk

Responsibilities

Discretionary with judge

Case file review

Legal research

Coordinate with counsel

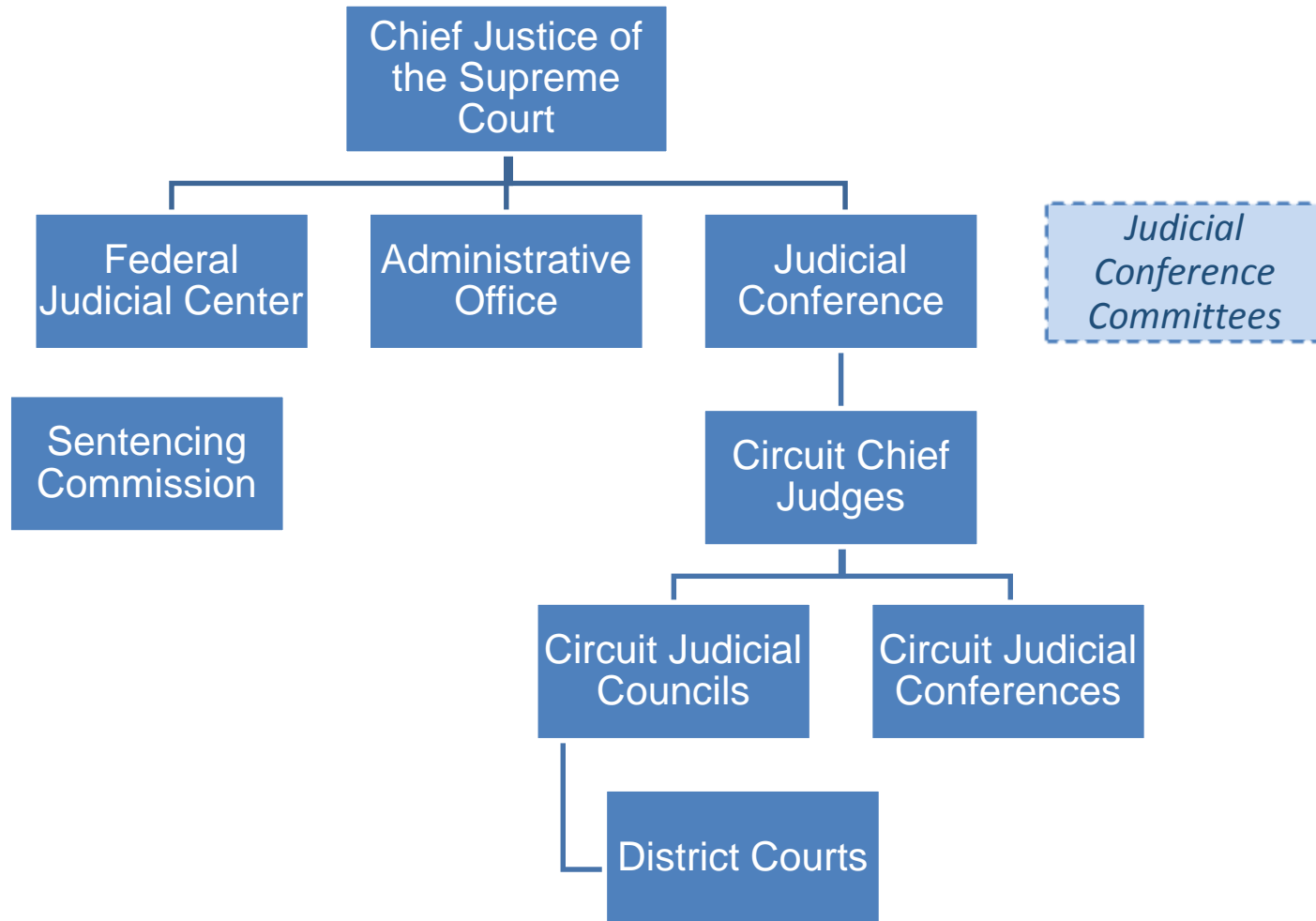
Write memoranda

Review draft opinions



Justice Horace Gray (1882)
"inspiration and criticism"

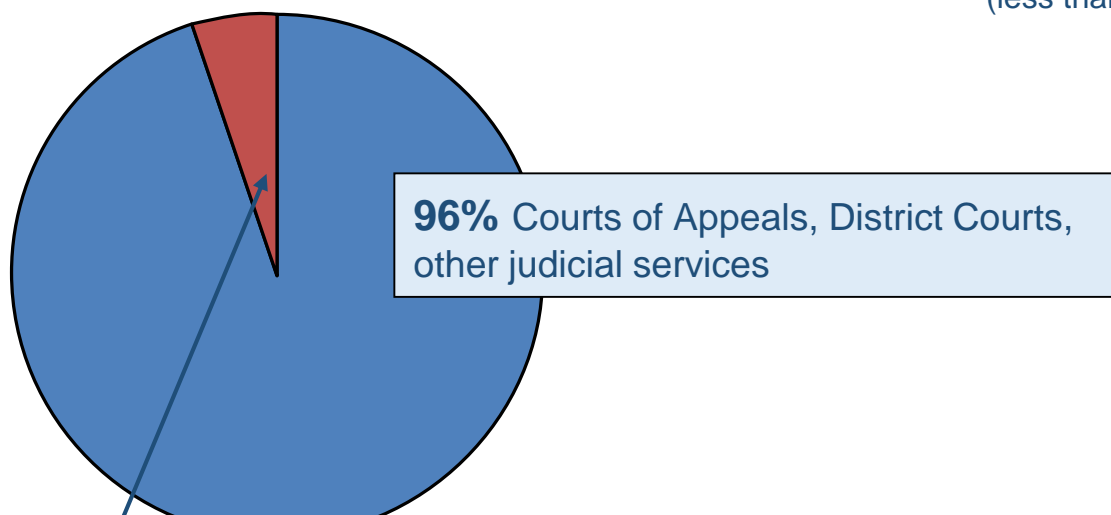
Judicial Administration



Funding the Courts

Budget for the Federal Judiciary: \$6.78 billion (FY 2016)

(less than 1/5 of 1% of U.S. budget)



4% Supreme Court, Federal Circuit, Court of Int'l Trade, Administrative Office, FJC, Sentencing Commission

Judicial Salaries (2016)

Supreme Court:	\$249,300 (CJ: \$260,700)
Court of Appeals:	\$215,400
District Court:	\$203,100
Bankruptcy/Magistrate Judge:	\$186,850

Judicial Performance Evaluation

Accountability

Improve performance

Inform judicial education

Criteria: neutral and quantifiable

Legal knowledge, integrity, impartiality, professionalism, temperament, communication skills (written/oral), management skills

Implementation

Mechanism: legislation, court rule, judicial council, bar association

Sources: attorneys, court staff, law enforcement, litigants, trained court observers, written decisions, dockets

Tools: questionnaires, interviews, observation

Voluntary or mandatory

Results only to judge or made public



Conduct and Discipline

CONSTITUTION of the UNITED STATES

Article III, Section I: Judges serve “during good behavior”

Article II, Section IV: Judges may be removed from office only for “high crimes and misdemeanors”

LEGISLATION

Judicial Conduct and Disability Act of 1980

Financial Disclosure (5 U.S.C §101-112)

Limits on Outside Income (5 U.S.C. §501-505)

Disqualification (28 U.S.C. §455)

CODE OF CONDUCT FOR UNITED STATES JUDGES


Adopted by Judicial Conference of the United States

Non-Binding Rules

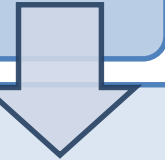
Judicial Conference Committee: Advisory Opinions on Codes of Conduct

Judicial Conduct and Disability Act

Anyone may file a complaint with the Clerk of the Circuit Court of Appeals about judicial misconduct (*bias, hostility, conflict of interest, or other ethical violation, but not disagreement with court's ruling*) or disability (*physical or mental impairment affecting performance*).




Chief Circuit Judge reviews complaint and may dismiss if no basis for complaint, end process if corrective action taken, or refer to Special Committee for investigation. Findings sent to Circuit Judicial Council.



If violation found, Council may institute “corrective measures” (*no new cases, informal counseling, censure, reprimand*) or refer to Judicial Conference. Judicial Conference will review and may send to House of Representatives for investigation.

Final action on complaints must be posted on court's public website.



Impeachment, trial, and removal process in Congress.

As of 2016, there have been 15 impeachments and 8 convictions of U.S. judges.

Courts and the Media

Transparency

Open proceedings, court records, published decisions

U.S. Constitution

Speech (1st Amendment)

Fair trial (6th Amendment)

Ethical obligations

Judges must “avoid public comment on the merits of a pending or impending action...”

May make public statements “in the course of... official duties, to explain court procedures, or... (for) purposes of legal education.”

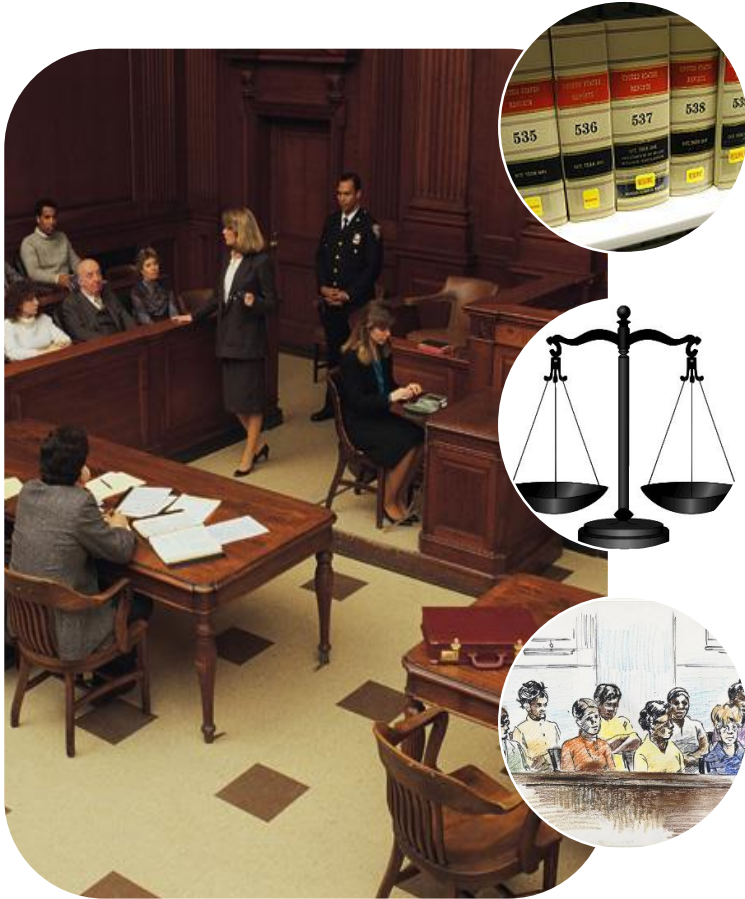
Committees, programs: Bench/Bar/Media/Public

Communication to foster accurate, responsible reporting and understanding

Legal Traditions

	COMMON LAW	CIVIL LAW
Sources of Law and Jurisprudence	Constitution Court decisions (precedent) Legislation Custom	Enacted law (constitution, code, executive decrees, administrative regulations) Custom Writings of legal scholars
Legal Analysis	Interpretation/application of precedent Reasoning by analogy Judicial review of legislation	Application of code Precedent (informative not binding) Judicial review in some countries
Role of Judge	Manage proceedings Decide matters of law Rule on admissibility of evidence If no jury, find facts	Investigate and gather evidence Question witnesses Find facts
Role of Attorney	Active: gather evidence Advise client Develop, prepare, and present case	Point out favorable evidence Advise client Prepare court documents
Proceedings	Adversarial Oral Appeal: law and procedure	Inquisitorial Documents, statement summaries Appeal: facts, law and procedure
<i>Contemporary practice: convergence of two traditions in many countries</i>		

Judicial Practice: U.S.



Common Law

Precedent

Statutes

Rules of procedure, evidence

Court Proceedings

Adversarial

Role of judge and attorneys

Trials

Jury or judge

Continuous trial

Verbatim transcript

Federal Trials: 2015

	CIVIL	CRIMINAL
Total	4734	6834
Jury : Non-jury	2:3	3:8
1 Day	54%	72%
2-3 Days	23%	15%
4-9 Days	21%	11%
10+ Days	2%	2%

Path of a Civil Case



Pretrial Conference

Case management tool

- Facilitate efficient court proceedings

- Review claims, defenses, witnesses, evidence, legal motions

- Establish schedule

Series of meetings

- Counsel must attend and file reports

- Discuss case progress, including settlement

- Final conference held before trial



Elements of Case Management

Judicial control of case

Each case assigned to one judge

Judge clarifies what is expected of attorneys and monitors case progress

Firm, credible trial dates

Set early

Based upon type of case (*differential case management*)

Continuous trial

Delegation of non-judicial duties

Strong central court administration

Centralized information management system

Transparency

Random weighted case assignment

Statistical data available to public

Judicial Business of the United States Courts

Federal Court Management Statistics

Civil Justice Reform Act of 1990

Semi-annual report prepared by Administrative Office

All motions pending > 6 months

All non-jury trials undecided > 6 months

All civil cases pending > 3 years

Statistics by court, judge, case

To reduce costs and delay, assist with resource allocation

Internal reports: caseloads, disposition rates

Alternative Dispute Resolution

Federal courts must offer ADR

Discretion as to type of program

Types of ADR

Mediation is the most common

Early neutral evaluation, arbitration, settlement week, summary trials

Consent of parties

Required by some courts

Other courts permit judges to order parties to ADR

Costs

Parties may be required to pay mediation fees

Providers

Panel of mediators, outside neutral, court staff mediator, judges

Self-Represented Litigant

No right to court-appointed counsel in civil cases

Right to appear without an attorney

Federal court: by statute

Some exceptions (e.g., corporations, class actions)

FY 2015: 73,745 pro se cases filed (2/3 prisoner cases)

State courts

Many states have at least one pro se litigant in over half of certain types of cases

Court resources

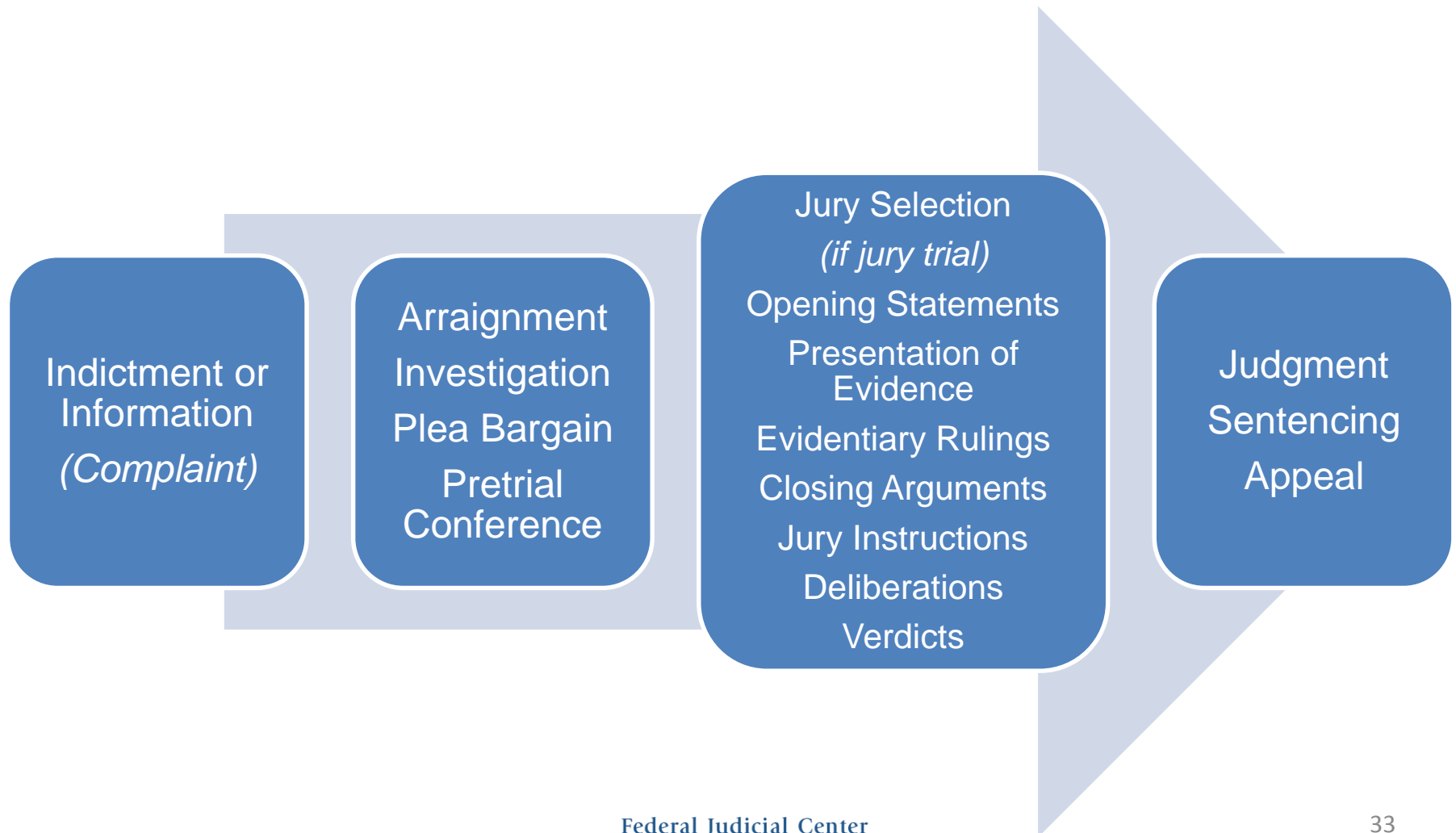
Provide some procedural assistance, but not legal advice

May also make available forms, instructions, and manuals

Pro Se
Case Management
for Nonprisoner Civil Litigation

Federal Judicial Center
© 2016

Path of a Criminal Case



Criminal Trial: Roles



Prosecutor

- Represents government
- Brings criminal charges
- Bears burden of proof
- Must prove guilt beyond a reasonable doubt
- Must disclose evidence favorable to accused



Defense Counsel

- Constitutional right to counsel
 - *private*
 - *court-appointed*
 - *public defender*
- Represents accused
- Tests government's case
- Protects defendant's right to fair trial



Judge

- Does not investigate
- Issues warrants
- Decides
 - *legal, evidentiary issues*
- If no jury, finds facts
- Manages trial
 - *fair, timely*
- Guards against prosecutorial misconduct
- Imposes sentence

Plea Bargaining



Step 1

Negotiations between prosecutor and defendant's attorney: defendant agrees to admit guilt in exchange for a reduced sentence



Step 2

Proposed agreement presented to judge for approval; Judge may reject proposed plea



Step 3

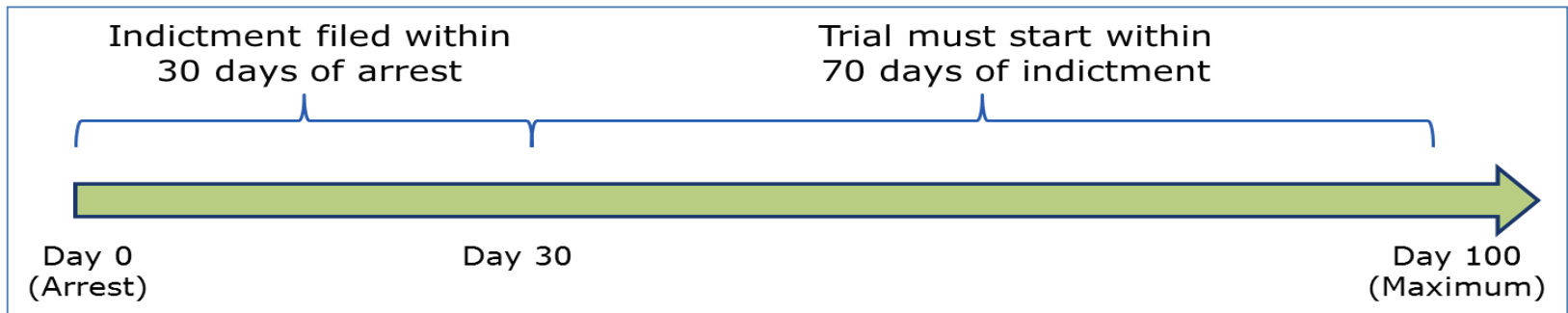
If plea bargain moves forward, judge conducts a hearing and questions the defendant to ensure that defendant is competent, understands the proceeding, and was not forced into pleading guilty

The vast majority of criminal cases in the United States courts conclude with a plea bargain.

Speedy Trial

Sixth Amendment to U.S. Constitution: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...”

Speedy Trial Act (1974): time limits for completing stages of prosecution



Defendant may consent to stopping “speedy trial clock”

Clock stops during pretrial motions, unavailability of the defendant or key witness, interlocutory appeal

Otherwise, failure of prosecution to adhere to time limits may result in dismissal of case

Jury Trial: Background

History

England (1166): formalized process of 12 men to help royal judges make important legal determinations

Pre-revolutionary U.S.: distrust of executive authority

United States Constitution (1787)

Article III: “The trial of all crimes, except in cases of impeachment; shall be by jury; and such trial shall be held in the State where the said crimes have been committed...”

7th Amendment: jury trial in civil cases involving money damages



Federal Judicial Center



Jury: Criminal and Civil

	Criminal (> 6 months in prison)	Civil (money damages)
Grand jury / Preliminary hearing	Prosecutor presents evidence to determine whether there is “probable cause” that individual committed a crime 16-23 persons; 12 must agree	None
Trial jury	12 persons (some states allow smaller criminal juries)	6-12 persons
Verdict	Unanimous* *Oregon and Louisiana do not require unanimity	Unanimous unless parties agree to majority verdict
Sentence / Damages	Judge Jury in capital (death penalty) cases	Jury, but judge may modify

Summons and Selection

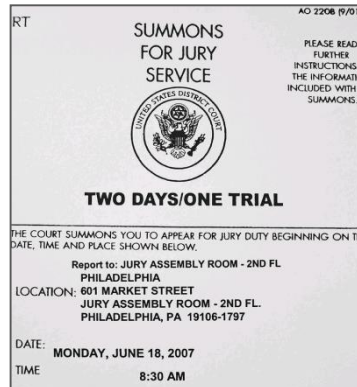
Summons

Cross-section of the public

Random selection from registered voters and drivers

Exempt from jury service:
active military,
firemen,
policemen,
public officers

Hardship postponement



Selection

Voir dire: judge, attorneys, or both question potential jurors to determine their suitability

Purpose of *voir dire* is to exclude persons with bias

Jury and alternates (2-3) selected

95% of all jury cases finish in five days or fewer

Sentencing Guidelines



United States Sentencing Commission

Independent judicial branch agency

President appoints 7 voting members, including 3-4 judges

Establishes national guidelines

Collects and analyzes information about crime and sentencing

Sentencing Guidelines

Advisory, not mandatory

Intended to:

Promote fairness through proportionality

Prevent disparities

Flexibility: aggravating and mitigating factors

Reflect current understanding of human behavior

Re-entry Courts

Problem-solving principles to reduce recidivism

Programs active in 50 federal district courts

Vary in scope, but most include:

- Supervision, drug and job counseling, cognitive behavior therapy

Court involvement

- Authority, structure, accountability, sanctions/incentives

- Scheduled sessions with individuals or group

Team *(judge, parole/probation, treatment professional, prosecutor, defender)*

Features

- Voluntary

- Eligibility screening

- Evidence-based practices

Research studies underway to assess impact



Western District of Missouri Re-entry Court

Federal Judicial Center

Established by statute, 1967

Judicial branch agency

Mandate: education & research

Board

Chief Justice, 7 judges, AO Director

Director

Appointed by Board

Staff: 123 (2015)

Budget: \$27,719,000 (2016)



Adult Education: the Foundation

Competencies

- Knowledge, skills, values

- Evidence-based learning objectives related to professional responsibilities

Task oriented

- Relevant, practical goals

Engaged, active, self-directed learner

- Program “ownership”

- Experiential learning

- Facilitation not instruction

Program Topics

Identified in consultation with Advisory Committees

Judicial Ethics

Substantive Law

Procedure and Evidence

Criminal Sentencing

Opinion Writing

Case Management

Court Administration and Leadership

Courtroom Skills

Using Information Technology

Science & Technology

Evolving Needs



Sentencing reform



Neuroscience



eDiscovery

Workshops & Seminars

Orientation

2 one-week sessions

Continuing Education

General

2-3 days, in different cities

Specialized

Often in partnership with universities

Environmental law, employment law, intellectual property, mediation skills, science and technology, national security issues, etc.

Faculty: judges and experts

Not mandatory



FJC Publications

Some developed with an Advisory Committee

All reviewed by judges before publication

Benchbook for District Court Judges

Judicial Writing Manual

Recurring Problems in Criminal Trials

Case Management & ADR

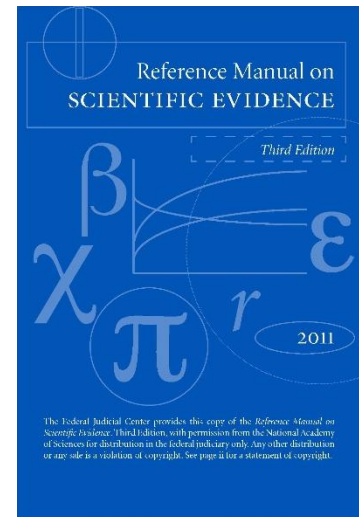
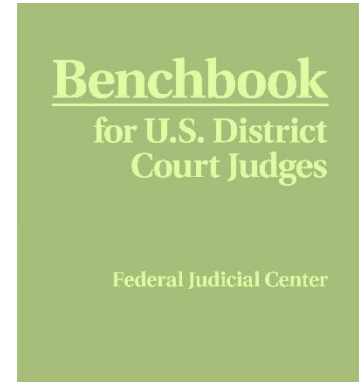
Deskbook for Chief Judges

Reference Manual on Scientific Evidence

Manual for Complex Litigation

Monographs on Legal Issues

Guides on Case Management and Procedural Issues



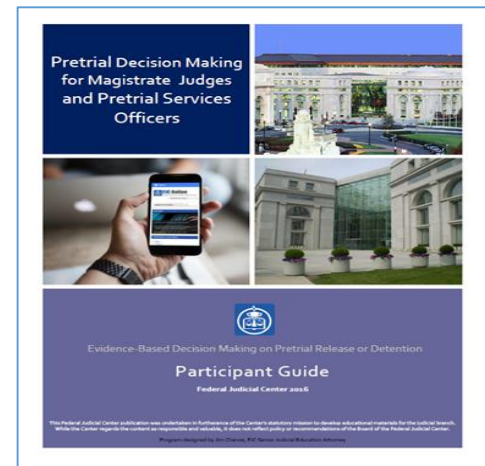
Programs for Court Staff

Court Administrators

- Court administration
- Leadership and supervision
- Communication skills
- Implementing judiciary policy
- Change management
- Code of conduct
- Jury trial administration

Probation & Pretrial Services

Workshops, conferences, in-court programs, eLearning



Distance Education

FJC intranet site

Streaming video & audio

Web & video conferencing

eLearning

FJC production studio



FJCOnline
Intranet Site of the Federal Judicial Center

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Search FJC Online

Monthly spotlight

The Psychology of Litigation

Resources for Judges Meeting with Foreign Counterparts
Second Edition Patent Case Management Judicial Guide
Federal Court Decisions Involving Electronic Discovery
Supreme Court - Year in Review 2012

New Releases

- Multijurisdiction Litigation (Sep 20, 2013)
- Case Studies in Emergency Election Litigation (Jul 10, 2013)
- Benchbook for U.S. District Court Judges, Sixth Edition (Jun 27, 2013)
- The Help America Vote Act (Feb 23, 2013)
- New Bankruptcy Clerks' Orientation Guide (Feb 23, 2013)
- Guide to Judicial Well-Being (Feb 23, 2013)
- Court Attorney Web: Hot Topics in Legal Ethics (Feb 23, 2013)
- Court to Court: Translating Evidence Based Practice Concepts into Office Practices (March 2013) (Feb 23, 2013)
- A Review of Eighth Circuit Bankruptcy Decisions (2013 Program) (Feb 23, 2013)
- Emerging Technology and the Future of Law (Feb 23, 2013)

Selected Resources

- Election Litigation
- Managing Capital Cases

Programs / Events Calendar

M	T	W	T	F	S	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Recently Announced Programs

- Court Web: Memories of and Reflections About Gideon v. Wainwright
- Kristina - "Test for Mobile Agenda" Law and Genetics Seminar
- Phase II Orientation for Newly Appointed District Judges
- Esther (test) FJC Online Hands-on Workshop

External Links

- Federal Judicial Center Foundation
- FJC Internet Site
- J-Net
- Judicial Panel on Multidistrict Litigation
- Supreme Court of the United States
- U.S. Courts
- U.S. Sentencing Commission

Is It Legal Advice?
Appellate and District Courts

Print | Program Map | Program Evaluation | Contact Us

Introduction | Customer Service | Resources

Welcome

Introduction
Welcome
About This Program

Welcome to *Is It Legal Advice?*, a customer service program for appellate and district court employees.

How effectively you identify issues, how accurately you give information, and how helpful you are in assisting customers determines how successful you are and how satisfied the customer will be when conducting business in the court.

The private sector's age-old motto is "the customer is always right." In contrast, the service you provide court customers is bound by a set of rules that are meant to preserve the court's strict neutrality, thus giving all litigants a fair forum for settling disputes.

This program focuses on the knowledge and skills you need to answer questions on court rules and procedures, while avoiding giving legal advice or inappropriate answers. And because knowing how to answer queries is as important as knowing what to say, you will learn about some techniques to use when providing service to court customers.

Next: About This Program

Research at the FJC

Mandate: to develop and undertake analytical, empirical research in the fields of court operations and judicial administration, often at the request of judicial branch policymakers or Congress

Projects include:

Case management

Alternative Dispute Resolution

Case weights

Courtroom technology

Impact of rules reform

Courtroom usage

Offender re-entry programs



Federal Judicial History

Mandate: to conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government

Studies history of the federal judiciary

Produces publications

Provides guidance about preservation of court documents and judges' papers

Compiles statistical and biographical information about judges

Teaching Judicial History Project:
background on famous federal trials and related public debates



International Judicial Relations

Mandate: to exchange information about judicial-branch education, court operations, and strategies for improving the administration of justice with judges and court personnel from other countries

Informational briefings

Educational programs

Visiting Foreign Judicial Fellows Program

International conferences

Technical assistance

Materials

International Judicial Relations Committee



Visitors to the FJC: 2015

In 2015, the Center hosted 571 visitors from 54 different countries and jurisdictions:

Afghanistan, Albania, Algeria, Argentina, Armenia, Australia, Azerbaijan, Bangladesh, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, China, Czech Republic, Denmark, Ethiopia, Finland, Gabon, Georgia, Germany, Honduras, Hungary, Japan, Kazakhstan, Kyrgyzstan, Laos, Liberia, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Nigeria, Pakistan, Philippines, Qatar, Russia, Saudi Arabia, Serbia, Singapore, South Korea, Spain, Sri Lanka, Sweden, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, United Kingdom, Uzbekistan, Zimbabwe



Federal Judicial Center
One Columbus Circle NE
Washington, DC 20002-8003
www.fjc.gov



References by Slide

Slide 6

Federal caseload statistics: <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2015>

Active authorized federal judges: <http://cwn.fjc.dcn/history/home.nsf/fs1>

State court judges and caseload statistics: www.courtstatistics.org

Slide 7

Supreme Court petitions granted full review: <http://www.uscourts.gov/statistics/table/1/judicial-business/2015/09/30>

Petitions for writs of certiorari from Supreme Court: <http://www.uscourts.gov/statistics/table/b-2/judicial-business/2015/09/30>

Authorized federal judgeships: <http://www.uscourts.gov/judges-judgeships/authorized-judgeships>

Federal judicial caseload statistics: <http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2015>

Slide 9

Law school accreditation statistics:
http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html

References cont'd

Slide 10

Continuing legal education information:

http://www.americanbar.org/publications_cle/mandatory_cle/mcle_states.html

Slide 12

Judicial selection information:

http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=

Judicial retirement ages: https://ballotpedia.org/Mandatory_retirement

Slide 14

Federal judge demographic statistics: <http://cwn.fjc.dcn/history/home.nsf/fs1>

Slide 19

Judicial salary information: http://www.fjc.gov/history/home.nsf/page/judges_salaries.html

Federal judiciary budget information: <http://www.uscourts.gov/news/2015/12/21/fy-2016-funding-meets-judiciary-needs>

Slide 22

Judicial impeachments and convictions:

http://www.fjc.gov/history/home.nsf/page/judges_impeachments.html

References cont'd

Slide 26

Number of trials 2015: <http://www.uscourts.gov/statistics/table/t-1/judicial-business/2015/09/30>

Length of trials 2015: <http://www.uscourts.gov/statistics/table/t-2/judicial-business/2015/09/30>

Slide 32

Pro se case statistics: <http://www.uscourts.gov/statistics/table/c-13/judicial-business/2015/09/30>

Slide 38

Types of juries: <http://www.uscourts.gov/services-forms/jury-service/types-juries>

Slide 39

Jury service: <http://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service>

Jury selection and exemptions: <http://www.uscourts.gov/services-forms/jury-service/juror-qualifications>

Slide 42

FJC staff and budget information:

http://fjconline.fjc.dcn/sites/default/files/2016/Annual%20Report%202015_0.pdf